

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

AZael Dythian Perales,

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4:09CV3231

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Plaintiff,

)

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v.

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**MEMORANDUM
AND ORDER**

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UNITED STATES EQUAL
EMPLOYMENT OPPORTUNITY
COMMISSION, et al.,

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Defendants.

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This matter is before the court on Plaintiff's Notice of Appeal (filing no. [8](#)), Motion for Leave to Appeal in Forma Pauperis (filing no. [9](#)), and Motion to Continue (filing no. [12](#)). On December 15, 2009, the court dismissed Plaintiff's Complaint without prejudice and entered judgment against him. (Filing Nos. [6](#) and [7](#).) Plaintiff filed a Notice of Appeal of the court's Judgment 107 days later, on April 1, 2010. (Filing No. [8](#).)

[Federal Rule of Appellate Procedure 4](#) ("Rule 4") governs the time in which a notice of appeal must be filed. As set forth in Rule 4, a notice of appeal "must be filed with the district clerk within 30 days after the judgment or order appealed from is entered." This time limit is mandatory and jurisdictional, and failure to file a timely notice of appeal deprives an appellate court of jurisdiction. *See, e.g., Lowry v. McDonnell Douglas Corp.*, 211 F.3d 457, 462-64 (8th Cir. 2000) (citations omitted). However, Rule 4 permits an extension of time in which to file an appeal if (1) such extension is requested within the "extension period," (i.e., within 30 days after expiration of the appeal deadline); and (2) regardless of the "extension period," the appellant shows excusable neglect or good cause for the delayed filing of the appeal. [Fed. R. App. P. 4\(a\)\(5\)\(A\)](#).

In this matter, Plaintiff did not seek an extension of the time in which to file a notice of appeal. Regardless, an extension under Rule 4 would still be appropriate, provided that the requisite showing of excusable neglect or good cause had been made. However, Plaintiff's Notice of Appeal does not address the fact that it was not timely filed. Further, Plaintiff completely ignores the issues of excusable neglect or good cause. Plaintiff has not stated any reason for his failure to file a timely notice of appeal and therefore has not shown the court that his failure is for good cause or as a result of excusable neglect. The court does not have discretion to extend the time for filing a notice of appeal absent a showing by the party seeking to appeal. [Fed. R. App. P. 26\(b\)](#) ("[T]he court may not extend the time to file [] a notice of appeal (except as authorized in Rule 4). . . .") As such, Plaintiff's Notice of Appeal (filing no. [8](#)) is untimely and is therefore invalid. Accordingly, Plaintiff's Motion for Leave to Appeal in Forma Pauperis (filing no. [9](#)) and Motion to Continue (filing no. [12](#)) are denied as moot.

IT IS THEREFORE ORDERED that:

1. Plaintiff's Notice of Appeal (filing no. [8](#)) is untimely.
2. Plaintiff's Motion for Leave to Appeal in Forma Pauperis (filing no. [9](#)) is denied as moot.
3. Plaintiff's Motion to Continue (filing no. [12](#)) is denied as moot.
4. The Clerk of the court shall not process the appeal to the Court of Appeals.

April 6, 2010.

BY THE COURT:

Richard G. Kopf

United States District Judge

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